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MICHAEL RODAK, J

APPENDIX

IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-1313

INTERNATIONAL TELEPHONE AND TELEGRAPH CORPORATION, COMMUNICATION EQUIPMENT AND SYSTEMS DIVISION,

Petitioner,

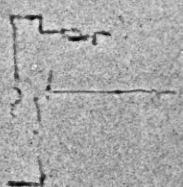
—v.—

LOCAL 134, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR CERTIORARI FILED FEBRUARY 25, 1974
CERTIORARI GRANTED MAY 13, 1974



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CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

DATE	PROCEEDINGS
12- 3-70	Charge filed in Case No. 13-CD-209.
12-23-70	Notice of Hearing in 10(k) proceeding.
3-12-71	Hearing opened in 10(k) proceeding.
3-15-71	Hearing in 10(k) proceeding continued.
3-17-71	Hearing in 10(k) proceeding concluded.
6-30-71	Decision and Determination of Dispute, in 191 N.L.R.B. No. 122.
7-16-71	Motion for Reconsideration filed by Local 134, IBEW.
7-30-71	Answer of Communications Workers of America opposing Local 134's Motion for Reconsideration.
8- 2-71	Letter in opposition to Motion for Reconsideration filed by International Telephone and Telegraph Company.
8-17-71	Order of National Labor Relations Board denying Local 134's Motion for Reconsideration.
9-10-71	Complaint and Notice of Hearing.
9-20-71	Answer to Complaint and Notice of Hearing.
11- 4-71	Hearing before Trial Examiner in Case No. 13-CD-209.
11- 4-71	Hearing before Trial Examiner closed.
2- 7-72	Trial Examiner's Decision.
2-28-72	Local 134's request for oral argument before National Labor Relations Board.
2-29-72	Local 134's Exceptions to Trial Examiner's Decision and Supporting Brief.

DATE	PROCEEDINGS
3-28-72	International Telephone & Telegraph Company's Answering Brief, Cross-exceptions and Supporting Brief.
Undated	Communication Workers of America's Brief in Support of Trial Examiner's Decision.
6-22-72	Decision and Order in 197 N.L.R.B. No. 127.
10- 4-72	Petition to Review and Set Aside Order of the National Labor Relations Board filed by Local 134.
11- 1-72	Motion for Leave to Intervene filed by International Telephone & Telegraph Company.
11- 3-72	Cross-Application for Enforcement of an Order of the National Labor Relations Board filed by National Labor Relations Board.
Undated	Motion of Communications Workers of America for Leave to Intervene.
11-16-72	Order of Seventh Circuit granting International Telephone & Telegraph Company's Motion for Leave to Intervene.
11-20-72	Order of Seventh Circuit granting Communications Workers of America's Motion for Leave to Intervene.
4-18-73	Oral argument before Seventh Circuit.
9-20-73	Decision of Seventh Circuit in 486 F.2d 863.
9-20-73	Order of Seventh Circuit denying Application for Enforcement of Decision and Order of the National Labor Relations Board in 197 N.L.R.B. No. 127.
11-26-73	Order of Seventh Circuit denying Petitions for Rehearing filed by National Labor Relations Board, International Telephone & Telegraph Company and Communications Workers of America.

DATE	PROCEEDINGS
2-25-74	Petition for Writ of Certiorari filed by International Telephone & Telegraph Company.
Undated	Brief of Respondent CWA in support of Petition for Writ of Certiorari.
4-74	Memorandum on Petition for Writ of Certiorari filed by Solicitor General on behalf of National Labor Relations Board.
Undated	Brief in Opposition filed by Local 134.
5-13-74	Order of Supreme Court allowing Certiorari.

UNITED STATES OF AMERICA
BEFORE THE
NATIONAL LABOR RELATIONS BOARD
THIRTEENTH REGION

Case No. 13-CD-209

LOCAL UNION NO. 134, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO

and

INTERNATIONAL TELEPHONE & TELEGRAPH CORPORATION, COMMUNICATIONS EQUIPMENT AND SYSTEMS DIVISION

NOTICE OF HEARING

PLEASE TAKE NOTICE that on the 4th day of January, 1971, at 10 a.m., in Room 823, Everett McKinley Dirksen Building, 219 South Dearborn Street, Chicago, Illinois, pursuant to Section 10(k) of the National Labor Relations Act, a hearing will be conducted before a Hearing Officer of the National Labor Relations Board upon the dispute alleged in the charge attached to the Notice of Charge filed, issued in this matter on the 3rd day of December, 1970. At said hearing, the parties will have the right to appear in person or otherwise and give testimony.

The dispute concerns the assignment of the following tasks in the Administration Building of the Village of Elk Grove, which is located at 191 Biesterfield Road, Elk Grove Village, Illinois:

> The installation, testing and maintenance of the PBX telephone switchboard and the installation of telephones, excepting telephones servicing the police and fire departments, at various locations in the building.

IN WITNESS WHEREOF, the undersigned Regional Director, on behalf of the Board, has caused this Notice of Hearing to be signed at Chicago, Illinois, on this 22nd day of December, 1970.

/s/ Ross M. Madden
ROSS M. MADDEN
Regional Director
National Labor Relations Board
Thirteenth Region
Everett McKinley Dirksen Building
Room 881, 219 South Dearborn Street
Chicago, Illinois 60604

WESTERN UNION TELEGRAPH—

Dated March 14, 1971

OGDEN W. FIELDS
Exec. Sect'y, NLRB
1717 Pennsylvania Ave., N.W.
Washington, D.C.

RE: Local 134 IBEW (ITT-CESD) Case No. 13-CD-209. 10K Hearing Local 134 requests special permission to appeal from following rulings of hearing officer. (I) Granting of Petition to Revoke part of subpoenas of Local 134 seeking evidence on legality of collective bargaining agreement now in evidence in Hearing Officer exhibit #1. Purpose of evidence was to advise Board of legality of contract which CWA and Employer urge as basis for CWA jurisdictional claim. Hearing officer granted petitions to revoke on theory that 10B period had run and no unfair labor practice could be found. Hearing officer reliance on Bryan Mfg. case is in error because: (A) he assumed the function of Trial Examiner or Regional Director by ruling on unfair labor practice charge; (B) was wrong as matter of law because Bryan Mfg. decision is predicated on notice to charging party, which is not present here because Local 134 had no knowledge of collective bargaining agreement until its application within the jurisdiction of Local 134 in December 1970; and (C) Hearing Officer is preventing Board from receiving evidence which will aid the Board in jurisdictional determination by preventing Board from giving consideration to collective bargaining agreement which was executed in violation of the Act and applied to Local 134's jurisdiction only after Employer waited for 10(l) period to run.

(II) Hearing officer's ruling that Employer may introduce evidence in support of its position that Board

should issue order which would be the determination of jurisdictional question on nationwide basis. Ruling is in error because Notice of Hearing sets dispute as work in Elk Grove Village Illinois which is in jurisdiction of Local 134 only and Board should determine that jurisdictional question which encompasses Local 134 only. Attorney for Local 134 only and not for International Brotherhood of Electrical Workers or any other Local of IBEW in this jurisdictional matter. Failure to amend Notice of Hearing, and to serve IBEW and any other local union of IBEW which might be affected by decision of Board is denial of due process to Local 134, IBEW, and any other local of IBEW which may be affected thereby because Local 134 cannot litigate matters beyond its knowledge. IBEW and other locals of IBEW are not given opportunity to appear at this hearing and to argue on matters which will ultimately affect them.

Local 134 requests Board grant permission to appeal from conduct set out above, and that Board order hearing officer to adjourn hearing until Board rules on appeal. Copies of this request will be served on hearing officer and other counsel of record at scheduled resumption of hearing; 9:30 AM, Central Time, March 15, 1971.

/s/ Robert E. Fitzgerald
ROBERT E. FITZGERALD
Attorney for Local 134, IBEW

Sender's Tel. No.: 922-3113

/s/ Robert E. Fitzgerald, Jr.
ROBERT E. FITZGERALD, JR.
53 W. Jackson Blvd.
Chicago, Ill. 60604

GOVERNMENT WIRE—Dated March 17, 1971

Re: *ITT Corporation, 13-CD-209*

Local 134, IBEW's request for special permission to appeal from Hearing Officer's ruling is hereby denied. By direction of the Board.

HAROLD F. LEBARON
Associate Executive Secretary
NLRB
Washington, D.C.

191 NLRB No. 122

UNITED STATES OF AMERICA
BEFORE THE
NATIONAL LABOR RELATIONS BOARD

Case 13-CD-209

[Title Omitted]

DECISION AND DETERMINATION OF DISPUTE

This is a proceeding under Section 10(k) of the National Labor Relations Act, as amended, following the filing of a charge by International Telephone & Telegraph Corporation, Communications Equipment and Systems Division, herein called the Employer, alleging that Local Union No. 134, International Brotherhood of Electrical Workers, AFL-CIO, herein called Local 134, had violated Section 8(b)(4)(i) and (ii)(D) of the Act by engaging in certain proscribed activity with an object of forcing or requiring the Employer to assign the work in dispute to members of Local 134 rather than to employees of the Employer represented by Communications Workers of America, AFL-CIO, herein referred to as CWA.

Pursuant to notice, a hearing was held in Chicago, Illinois, before Hearing Officer Stephen S. Schulson on March 12, 15, and 17, 1971. All parties appeared at the hearing and were given full opportunity to be heard, to examine and cross-examine witnesses, and to adduce evidence bearing on the issues. Thereafter, briefs were filed by the Employer, Local 134, and CWA in support of their positions.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National

Labor Relations Board has delegated its powers in connection with this case to a three-member panel.

The Board has reviewed the rulings of the Hearing Officer made at the hearing and finds them free from prejudicial error. They are hereby affirmed.[1] The Board has considered the entire record in this case, including the briefs, and hereby makes the following findings:

I. The Business of the Employer

The parties stipulated, and we find, that International Telephone & Telegraph Corporation, Communications Equipment and Systems Division, is engaged in the distribution and installation of electronic telephone equip-

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[1] We agree with the Hearing Officer's rulings that it was untimely for Local 134 to attack the validity of the collective-bargaining agreement between the Employer and CWA for 8(a)(2) purposes, and that material subpenaed by Local 134 was therefore not relevant. Section 10(b) would bar the issuance of a complaint attacking CWA's representative status as of the time the present contract was executed. *Local Lodge No. 1424, International Association of Machinists* v. *N.L.R.B. (Bryan Manufacturing Company)*, 362 U.S. 411. Accordingly, as CWA's representative status could not be litigated under these circumstances, we agree that such evidence could not be adduced in an 8(b)(4)(D) proceeding for the purpose of collaterally attacking CWA's status as statutory bargaining representative.

Local 134 alleges that it was denied substantive due process by what it considers inadequate notice as to the scope of the hearing, claiming that the Employer and CWA introduced evidence of events occurring beyond the jurisdiction of Local 134 and beyond its knowledge, thereby "tainting" the record. We disagree. The Board has consistently looked to the custom and practice of the industry, employer practice, and contract coverage as factors relevant to its consideration of the merits of the dispute. *International Association of Machinists, Lodge No. 1743, AFL-CIO (J. A. Jones Construction Co.)*, 135 NLRB 1402. Local 134 therefore had sufficient notice of the scope of the hearing on these matters. Further, the record, in our view, is of sufficient clarity to support a determination of dispute and an award confined to the area served by Local 134.

Accordingly, we find no merit in Local 134's requests to reopen the hearing.

ment and related products with facilities in the States of Connecticut, Illinois, Tennessee, New York, New Jersey, California, Florida, and other States. During the past calendar year, International Telephone & Telegraph Corporation, Communications Equipment and Systems Division, in the normal course and conduct of its operations, has received goods and materials valued in excess of $100,000 which were shipped to its facilities directly from across state lines. Accordingly, we find that International Telephone & Telegraph Corporation, Communications Equipment and Systems Division, is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. The Labor Organizations Involved

The parties stipulated, and we find, that Local Union No. 134, International Brotherhood of Electrical Workers, AFL-CIO, and Communications Workers of America, AFL-CIO, are labor organizations within the meaning of Section 2(5) of the Act.

III. The Dispute

A. *Background Facts*

In 1969, the Federal Communications Commission issued the *Carterfone* decision [2] which allowed private individuals or firms to purchase their own telephone equipment and have it "interconnected" with an operating telephone company system. Prior to this, operating telephone companies had refused to permit private telephone systems to be connected to the operating company's trunklines. The Communications Equipment and Systems Division of International Telephone & Telegraph Corporation was established shortly after the FCC decision, in

[2] 13 FCC 2d 420.

April 1969. The Employer is engaged in the sale, installation, testing, and maintenance of private telephone systems. The equipment sold by the Employer is manufactured by various divisions of International Telephone & Telegraph Corporation and is typically connected to the trunklines of the local operating telephone company.

The Employer entered into a contract with the Village of Elk Grove, Illinois, on August 27, 1970,[3] for the sale, installation, testing, and maintenance for 1 year of an EPABX[4] Model No. TE400 switching system and related telephone and circuitry work. The installation of this equipment involved the processes known as "pulling cable" and "terminating the cable;" the latter included installation of telephone instruments. The Employer subcontracted the work of "pulling cable" from the telephone room[5] to locations throughout the building to the C. A. Riley Electric Construction Co., a contractor whose employees are represented by Local 134. This work involved the pulling of 52 different cables and identification of each cable by physically tagging them so that it could readily be determined to which telephone sets they were to be connected. The Employer reserved the work of "terminating the cable" and the installation of the telephone instruments for its own employees, represented by CWA. C. A. Riley employees engaged in cable-pulling work from mid-November to mid-December. Employees of the Employer reported to the jobsite on December 3 and began installation of the EPABX equipment. At the request of village officials, made late in the day of December 3, the Employer did not return to the jobsite

[3] Unless otherwise noted, all events transpired in 1970.

[4] There is undisputed testimony in the record that the terms PBX, PABX, and EPABX are used interchangeably. The terms PABX and EPABX refer to refinements of the basic PBX system.

[5] Trunklines from the local operating telephone system were earlier installed by members of Local 134 employed by the Illinois Bell Telephone Company.

until December 21. The Employer thereafter completed the installation work on December 23.

B. *Work in Dispute*

The work in dispute herein is the installation, testing, and maintenance of the PBX telephone switchboard and the installation of telephones, excepting telephones servicing the police and fire departments, at various locations of the Elk Grove village administration building, Elk Grove, Illinois. The work in dispute is limited to that phase of the installation concerning termination of the cable and installation of the telephone instruments.[6]

C. *Contentions of the Parties*

The Employer contends that there is reasonable cause to believe that Local 134 has violated Section 8(b)(4)(D) of the Act, and that the record supports its assignment of the work in dispute to its employees represented by CWA. The Employer cites considerations of skill, industry and company practice, efficiency and economy of operations, and its collective-bargaining agreement with CWA in support of its assignment. Additionally, the Employer urges that the Board's award in this proceeding be nationwide in scope. CWA has taken a position basically consistent with that urged by the Employer regarding the work in dispute and the scope of the award.

Local 134 argues that the record is insufficient to support a finding that it engaged in any conduct that would amount to an unfair labor practice within the meaning of Section 8(b)(4)(D). It also contends that the work in dispute is within the jurisdiction of Local 134 and

[6] The Employer and CWA also argue the work of "cable pulling" should be assigned to employees represented by CWA. That work is not in dispute in this proceeding and, accordingly, we find it unnecessary to pass upon the merits of CWA's claim to that work.

should be assigned to individuals represented by it. Local 134 offers considerations of area practice, license requirements, economy, the alleged recognition of its jurisdiction by the Employer, the contract between the Employer and CWA, and the loss of job opportunities by members of Local 134, in support of its claim for the work in dispute.

D. *Applicability of the Statute*

Before the Board may proceed with a determination of a dispute pursuant to Section 10(k) of the Act, it must be satisfied that there is reasonable cause to believe that Section 8(b)(4)(D) has been violated. The record indicates that on November 11, Local 134 Business Agent Van Wetering told a representative of the Employer that CWA does not install telephones in Cook County.[7] Later, on November 30, prior to the time employees of the Employer represented by CWA appeared at the jobsite, Van Wetering met with the Employer's director for labor relations, Foster, and stated that Local 134 did the installation and maintenance of telephone equipment in Cook County. Van Wetering also told Foster on that occasion that Local 134 better do the work or there would be "trouble."

On December 3, when the Employer began installation of the EPABX equipment with CWA-represented employees, there were Local 134 members employed by Johnson Electric Company, Illinois Bell Telephone Company, and C. A. Riley working at the jobsite. After a Local 134 steward ascertained that the Employer's employees were represented by CWA, he said, "We can't work here." Another Local 134 steward told other Local 134-represented employees that "if they [CWA] are working here we are leaving." Employees of all three contractors

[7] Elk Grove, Illinois, is located within Cook County, Illinois.

thereafter left the building site taking their tools with them.

Local 134 suggests that this testimonial evidence is incredible. In a jurisdictional dispute context, the Board is not charged with finding that a violation did in fact occur, but only that there is reasonable cause to believe that there has been a violation.[8] On this testimony, and without ruling on the credibility of the testimony in issue,[9] we are satisfied that there is reasonable cause to believe that a violation of Section 8(b)(4)(D) has occurred.

The parties have not submitted satisfactory evidence that they have adjusted or agreed upon methods for the voluntary adjustment of this dispute. Under these circumstances, we find that it will effectuate the policies underlying Sections 10(k) and 8(b)(4)(D) of the Act for us to determine the merits of the dispute. Accordingly, we find that this dispute is appropriate for resolution under Section 10(k) of the Act.

On the basis of the entire record in this case, we find that there is reasonable cause to believe that a violation of Section 8(b)(4)(D) has occurred and that the dispute is properly before the Board for determination.

E. *Merits of the Dispute*

Section 10(k) of the Act requires the Board to make an affirmative award of the disputed work after giving

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[8] *Locals 138, 138A, 138B, 138C, and 138D, International Union of Operating Engineers, AFL-CIO (Cafasso Lathing & Plastering, Inc.)*, 149 NLRB 156, 158-159.

[9] See *Local Union No. 3, International Brotherhood of Electrical Workers, AFL-CIO (Western Electric Company, Incorporated)*, 141 NLRB 888, 893.

due consideration to various relevant factors.[10] The Board has held that its determination of a jurisdictional dispute is an act of judgment based upon commonsense and experience reached by balancing those factors involved in a particular case.[11]

The following factors are relevant in making a determination of the dispute before us:

1. Certification and collective-bargaining agreements

Neither labor organization involved herein has been certified by the Board nor is there evidence indicating that a Board certification covers the disputed work.

The Employer is party to a current, nationwide collective-bargaining agreement with CWA. That agreement applies to "installation, replacement, and maintenance operations [of the Employer] in the United States or its possessions." Pursuant to this agreement, the Employer has assigned its employees represented by CWA to perform the work in dispute. The Employer is not, and never has been, party to any collective-bargaining agreement with Local 134. We conclude, therefore, that considerations of collective-bargaining history and agreements favor assignment of the work to employees represented by CWA.

2. Area, employer, and industry practice

Local 134 contends that only individuals represented by it have performed PBX installation in Cook County, except for the instant dispute. In support of this contention, Local 134 relies primarily on the fact that

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[10] *N.L.R.B.* v. *Radio & Television Broadcast Engineers Union, Local 1212, International Brotherhood of Electrical Workers, AFL-CIO (Columbia Broadcasting System)*, 364 U.S. 573, 586.

[11] *International Association of Machinists, Lodge No. 1743, supra.*

Illinois Bell uses its own employees represented by Local 134 to install PBX equipment in Cook County. There is, however, uncontradicted testimony indicating that employees of Western Electric represented by CWA install and test central office equipment in Cook County for the operating telephone company, Illinois Bell. There is substantial evidence in the record before us to indicate that the work of installing and testing central office switching equipment and the work of installing and testing a PBX system are to a large degree quite similar in nature. Both are intended to "switch" telephone messages, albeit central office equipment is often constructed on a larger scale than is the ordinary PBX system. We note, in this regard, the uncontradicted testimony of the Employer's witness, Fulton, to the effect that a central office equipment man for an operating telephone company would be ideally qualified, by virtue of training and experience, to be a communications technician, the title the Employer gives to its employees performing the work in dispute.

In further support of its claim that its members are entitled to perform the work in dispute on the basis, in part, of established area practice, Local 134 points to a franchise agreement between International Telephone & Telegraph and Midco, Inc., for the installation of interoffice communications equipment (PAX) manufactured by a division of IT & T in the years 1960 through 1968. Local 134 argues that the Employer thereby recognized its claim to work in dispute. Midco utilized employees represented by Local 134 when installing PAX equipment within the jurisdiction of Local 134. Midco installed only one PBX system, in 1970.

We conclude from the foregoing that considerations of area practice favor neither labor organization in making an award of the work in dispute; while Local 134 has performed all PBX work in the area, CWA-represented

employees have performed highly similar work within Cook County. Moreover, area practice alone would not play a controlling role in our decision herein.

The nationwide industry practice is to assign the disputed work to individuals represented by CWA. In this regard, the record shows that it is the Employer's practice, on a nationwide basis, to assign this work to employees represented by CWA. The record also discloses that all installation of PBX equipment manufactured by Western Electric, a competitor of the Employer, is installed by employees of Western Electric or operating telephone companies represented by CWA, with the exception of work performed in Cook County and the State of New Jersey. Employees represented by Local 134 and International Brotherhood of Electrical Workers install Western Electric's PBX equipment in those areas, respectively. We find that Employer and industry practice favor assignment of the work in dispute to employees represented by CWA.

3. Skills and training of employees

In support of its assignment to employees represented by CWA, the Employer argues that the work of electricians and the work of telephone men is completely dissimilar. Fulton testified that an electrician is neither trained in nor works with electronics or solid state circuitry, while electronics training is the basis for the work of a communications technician. Fulton estimated that it requires 6 years of training for one of its communications technicians to become "fully qualified" to install PBX systems. The Employer also conducts special training classes for particular items of its equipment, including a 4-week training program for the type of PBX installed in the instant dispute.

Local 134 has not alleged that its members have had any experience with the particular type of equipment in-

stalled in the Elk Grove Village project, although there are some 40 electricans registered with Local 134's hiring hall who are one-time Bell Systems employees, and at least some of these 40 have had experience with PBX equipment while with Bell. Local 134 maintains no separate listing of its PBX-qualified members.

The record establishes to our satisfaction that the work of a communications technician, as employed by the Employer, and an electrician, as represented by Local 134, is significantly different and requires dissimilar training and techniques. Indeed, Local 134 described itself in its brief as "a union whose members traditionally perform electrical work on new construction work in conjunction with other building trades unions." In our view, the work in dispute is not properly described as "electrical work on new construction work" but rather the installation of an item of highly sophisticated communications equipment. Accordingly, we find that consideration of the factors of skill and special training favor assignment of the disputed work to employees of the Employer represented by CWA.

4. Efficiency and economy of operations

The record indicates that communications technicians employed by the Employer and represented by CWA are paid at a substantially lower hourly rate than are journeymen electricians represented by Local 134. Communications technicians have a maximum hourly wage of $3.27 while a journeyman electrician is rated at almost $8 per hour. A journeyman employee of a sound contractor, also represented by Local 134, receives $5.48 on an hourly basis.

C. A. Riley Company made a bid of $2,600 for the work of terminating the cable. The Employer's witness testified that this bid was about $1,000 too high. Riley's bid for the termination work was based upon an ap-

proximate 200 hours of work, later reduced to an estimated 180 hours. The record indicates that employees of the Employer performed this same work in no more than 96 hours.

The sales agreement between the Employer and Elk Grove Village includes a provision that the Employer will perform necessary maintenance work for a period of 1 year. We have found that maintenance requirements often militate in favor of an employer's assignment, especially when factors of training in installation and service of an employer's specific equipment are present.[12] Such factors are present in the instant dispute. We find that factors of both economy and efficiency support an award of the work in dispute to employees represented by CWA.

5. Other factors

Local 134 has raised a number of other issues that, it alleges, supports its claim to the work in dispute. It argues that the Employer failed to comply with certain general licensing requirements for electrical work, and that such requirements extend to the installation of telephone communications equipment.[13] It is undisputed that the Employer was not issued a license for the performance of the work in dispute. The question of licensing, in these circumstances, is irrelevant. Local 134's

[12] See, e.g., *Radio-Television-Sound Technicians Local Union 1139, International Brotherhood of Electrical Workers, AFL-CIO (Motorola Communications and Electronics, Inc.)*, 180 NLRB No. 154.

[13] The Employer argues in its brief that the general licensing requirements for electrical work do not apply to the installation of telephone communications equipment and notes that Local 134's assertion is predicated exclusively upon an interpretation of an allegedly relevant ordinance by a supervisor of electrical inspection for Chicago. Respondent has offered no citation to a court of competent jurisdiction that has squarely ruled upon the applicability of these licensing requirements to the installation of telephone communications equipment such as is present in the instant dispute.

witness, a supervisor of electrical inspection for Chicago, testified on cross-examination that whether or not an employer's employees were represented by CWA, Local 134, any other union, or no union, was completely immaterial to the requirement of obtaining a license. Thus, licensing requirements, such as they may be, concern the employer's qualifications for the work and not its assignment of it. They provide no assistance in our consideration of the merits of this dispute.

Local 134 also claims that failure to award the work to it will result in a loss of job opportunities for its members. In the context of this case, we do not accord this argument great significance. There are approximately 6,000 to 8,000 individuals registered as construction electricians with Local 134's seniority system, and an additional 400 to 500 members of Local 134 are classified as sound, radio-television, and public address electricians. Contrasted with this, the Employer employs an approximately total of 50 communications technicians throughout the nation. The Employer has proposed to locate no more than six technicians in the Chicago area. It is apparent that an assignment of the work to individuals represented by CWA will have no substantial effect upon the job opportunities available to individuals represented by Local 134.

We do not find that the additional considerations alleged by Local 134 provide substantial support in favor of an award to individuals represented by that labor organization.

F. *Conclusions*

Having considered all pertinent factors present here, we conclude that employees represented by CWA are entitled to perform the work in dispute. This assignment is compatible with the collective-bargaining agreement between CWA and the Employer. Such an award is consistent with industry and employer practice, and is

not clearly inconsistent with area practice in Cook County regarding the installation of PBX and similar systems. In addition, members of CWA possess the requisite skills and training, the Employer has been satisfied with their performance, and continued assignment will result in greater efficiency and economy of operation. We conclude from all of the foregoing that the Employer's assignment of work to employees represented by CWA should not be disturbed. On the basis of the entire record, therefore, we shall determine the existing jurisdictional controversy by awarding the work in dispute to employees of the Employer represented by CWA. In making this determination, we are assigning the disputed work to the employees of International Telephone & Telegraph Corporation, Communications Equipment and Systems Division, who are represented by Communications Workers of America, but not to that Union or its members.

G. *Scope of the Determination*

The work which gave rise to the instant dispute has been completed. The Employer and CWA request the award encompass the Employer's entire operation, i.e., nationwide. Alternatively, the Employer and CWA request that the award encompass Cook County, Illinois. Local 134's position throughout the hearing and in its brief to the Board has been that the Notice of Hearing and, therefore, the scope of the work, was limited to the jurisdiction of Local 134, which generally consists of Cook County. As Local 134 has not indicated that it will renounce its claim to the work in dispute, and as the Employer has continued to seek sales agreements within Cook County that include performance of the work in dispute, we find that the dispute is likely to recur between the parties. We shall, therefore, encompass Cook County, Illinois, within the scope of our determination of the dispute.

DETERMINATION OF DISPUTE

Pursuant to Section 10(k) of the National Labor Relations Act, as amended, and upon the foregoing findings and the entire record in this case, the National Labor Relations Board hereby makes the following determination of dispute:

1. Employees of International Telephone & Telegraph Corporation, Communications Equipment and Systems Division, who are currently represented by Communications Workers of America, AFL-CIO, are entitled to perform the work of terminating the cable and installing telephone instruments in Cook County, Illinois.

2. Local Union No. 134, International Brotherhood of Electrical Workers, AFL-CIO, is not entitled by means proscribed by Section 8(b)(4)(D) of the Act to force or require International Telephone & Telegraph Corporation, Communications Equipment and Systems Division, to assign the above work to individuals represented by Local Union No. 134, International Brotherhood of Electrical Workers, AFL-CIO.

3. Within 10 days from the date of this Decision and Determination of Dispute, Local Union No. 134, International Brotherhood of Electrical Workers, AFL-CIO, shall notify the Regional Director for Region 13, in writing, whether or not it will refrain from forcing or requiring International Telephone & Telegraph Corporation, Communications Equipment and Systems Division, by means proscribed by Section 8(b)(4)(D) of the Act, to assign the work in dispute to individuals represented by Local Union No. 134, International Brotherhood of Electrical Workers, AFL-CIO, rather than to employees of International Telephone & Telegraph

Corporation, Communications Equipment and Systems Division, represented by Communications Workers of America, AFL-CIO.

Dated, Washington, D.C., June 30, 1971.

JOHN H. FANNING
Member

GERALD A. BROWN
Member

RALPH E. KENNEDY
Member

NATIONAL LABOR
RELATIONS BOARD

[SEAL]

UNITED STATES OF AMERICA
BEFORE THE
NATIONAL LABOR RELATIONS BOARD
THIRTEENTH REGION

Case No. 13-CD-209

[Title Omitted]

COMPLAINT AND NOTICE OF HEARING

It having been charged by International Telephone & Telegraph Corporation, Communications Equipment & Systems Division (herein referred to as ITT-CESD) that Local No. 134, International Brotherhood of Electrical Workers, AFL-CIO (herein referred to as Local 134 or the Respondent), has been engaging in and is engaging in unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, as amended, 29 U.S.C. Sec. 151, *et seq.* (herein called the Act), the General Counsel of the National Labor Relations Board, on behalf of the National Labor Relations Board (herein called the Board), by the undersigned Regional Director for the Thirteenth Region, hereby issues this Complaint and Notice of Hearing, pursuant to Section 10(b) of the Act and Section 102.15 of the Board's Rules and Regulations, Series 8, as amended, and alleges as follows:

I

The charge herein was filed on December 3, 1970, and an exact copy thereof was duly served on Respondent by registered mail on or about December 4, 1970.

II

ITT-CESD is engaged in the distribution and installation of electronic telephone equipment and related products

with facilities in the States of Connecticut, Illinois, Tennessee, New York, New Jersey, California, Florida and other states. During the past calendar year, International Telephone & Telegraph Corporation, Communications Equipment & Systems Division, in the normal course and conduct of its operations, has received goods and materials valued in excess of $100,000 which were shipped to its facilities directly from across state lines.

III

(a) ITT-CESD is an employer within the meaning of Section 2(6) and (7) of the Act and is a person engaged in commerce or in an industry affecting commerce within the meaning of Section 8(b)(4)(i)(ii), subparagraph (D), of the Act.

(b) Respondent has been at all times material herein a labor organization within the meaning of Section 2(5) of the Act.

(c) The Communications Workers of America, AFL-CIO, hereinafter referred to as CWA, has been at all times material herein a labor organization within the meaning of Section 2(5) of the Act.

IV

At all times material herein, the following-named persons occupied positions set opposite their respective names, and were agents of the Respondent within the meaning of Sections 8(b) and 2(13) of the Act:

Burton Van Wetering—Business Agent
Roger Becker —Steward

V

(a) On August 27, 1970, ITT-CESD entered into a contract with Village of Elk Grove, Illinois, for the sale,

installation, testing and maintenance of a PBX telephone switchboard and related telephone and circuit work at the Elk Grove Village Administration Building, Elk Grove, Illinois.

(b) On November 10, 1970, ITT-CESD subcontracted the "cable pulling" portion of the contract described above in subparagraph (a) to C. A. Riley Electric Construction Co. At all times material herein, C. A. Riley's employees involved herein were members of, and represented by, Local 134.

(c) At all times material herein, Charles Johnson Electric Co., Inc. was an electric subcontractor of Ruby Construction Co., the Village of Elk Grove's general contractor for the construction of its Administration Building. At all times material herein, Charles Johnson Electric Co., Inc.'s employees involved were members of, and represented by, Local 134.

(d) At all times material herein, Illinois Bell Telephone Company installed and maintained telephones of the police and fire departments at the Elk Grove Village Administration Building. At all times material, Illinois Bell Telephone Company's employees involved herein were members of, and represented by, Local 134.

VI

At all times material herein, ITT-CESD assigned the work of installation, testing and maintenance of a PBX telephone switchboard at the Elk Grove Village Administration Building, Elk Grove, Illinois, and the work of installing telephones, other than emergency instruments, at the above location, to communications technicians in its employ who are members of, and represented by, the CWA, and who are not members of, or represented by, Local 134.

VII

On or about November 30, 1970, Respondent, by its agent, Burton Van Wetering, demanded that ITT-CESD assign the work described above in paragraph VI to employees who are members of, or represented by, Local 134, rather than to employees who are members of, or represented by, the CWA.

VIII

At no time material herein has Local 134 been certified by the Board as the collective bargaining representative of any of the employees of ITT-CESD engaged in work described above in paragraph VI, and at no time material herein has the Board issued an order directing ITT-CESD to bargain with Respondent Local 134 as the representative of said employees.

IX

(a) On or about November 30, 1970, Respondent Local 134, by its agent Burton Van Wetering threatened ITT-CESD with "trouble" if ITT-CESD assigned the work described above in paragraph VI to employees who were members of, or represented by, the CWA, rather than to employees who were members of, or represented by, Local 134.

(b) On or about December 3, 1970, Local 134, by its agents, induced and encouraged employees of Charles Johnson Electric Co., Inc., Illinois Bell Telephone Company, and C. A. Riley Electric Construction Co. to withhold their services at the Elk Grove Village Administration Building. In response to said inducement and encouragement, the above employees walked off their jobs at the Administration Building on December 3, 1970.

X

By the acts and conduct set forth in paragraph IX above, Respondent has induced and encouraged individuals employed by Charles Johnson Electric Co., Inc., C. A. Riley Electric Construction Co. and Illinois Bell Telephone Company, and by other persons engaged in commerce, or in industries affecting commerce, to engage in strikes or refusals in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on goods, articles, materials, or commodities or to perform services, and has threatened, coerced and restrained ITT-CESD, and other persons engaged in commerce or in industries affecting commerce.

XI

An object of the acts and conduct of Local 134, set forth in paragraph IX was, and is, to force or require ITT-CESD to assign the work of installation, testing and maintenance of a PBX telephone switchboard and related telephones to employees who are members of, or represented by, Local 134 rather than to employees who are members of, or represented by, the CWA.

XII

On June 30, 1971, the Board issued the following determination of the dispute involved herein (191 NLRB No. 122):

> 1. Employees of International Telephone & Telegraph Corporation Communications Equipment and Systems Division, who are currently represented by Communications Workers of America, AFL-CIO, are entitled to perform the work of terminating the cable and installing telephone instruments in Cook County, Illinois.
>
> 2. Local Union No. 134, International Brotherhood of Electrical Workers, AFL-CIO, is not entitled by

means proscribed by Section 8(b)(4)(D) of the Act to force or require International Telephone & Telegraph Corporation, Communications Equipment and Systems Division, to assign the above work to individuals represented by Local Union No. 134, International Brotherhood of Electrical Workers, AFL-CIO.

XIII

On August 30, 1971, Counsel for Local 134 informed the Regional Director of the Thirteenth Region that Local 134 does not intend to comply with the Board's determination set forth above.

XIV

By the acts and conduct described in paragraphs IX, X and XI, and by each of said acts, Respondent engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(b)(4)(i)(ii), subparagraph (D).

XV

The acts of Respondent, and each of them, described in paragraphs IX, X and XI, occurring in connection with the operations of ITT-CESD, described in paragraphs II and III, have a close, intimate and substantial relation to trade, traffic and commerce among the several states and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce within the meaning of Section 8(b)(4)(i)(ii), subparagraph (D), and Section 2(6) and (7) of the Act.

PLEASE TAKE NOTICE that on the 21st day of October 1971, at 10:00 a.m., in Room 824A, Everett McKinley Dirksen Building, 219 S. Dearborn Street, Chicago, Illinois, a hearing will be conducted before a duly designated Trial Examiner of the National Labor Relations Board on the allegations set forth in the above complaint, at which time and place you will have the right to appear in person, or otherwise, and give testimony. Form 4668, Summary of Standard Procedures in

Formal Hearings Held Before the National Labor Relations Board in Unfair Labor Practice Proceedings Pursuant to Section 10 of the National Labor Relations Act, As Amended, is attached hereto.

You are further notified that pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, Series 8, as amended, the Respondent shall file with the undersigned Regional Director, acting in this manner as agent of the National Labor Relations Board, an original and four copies of an answer to said complaint within 10 days from the service thereof and that unless they do so all of the allegations in the complaint shall be deemed to be admitted to be true and may be so found by the Board.

Dated at Chicago, Illinois, this 10th day of September 1971.

/s/ Ross M. Madden
ROSS M. MADDEN
Regional Director
Thirteenth Region
National Labor Relations Board
Everett McKinley Dirksen Building
219 South Dearborn Street, Room 881
Chicago, Illinois 60604

Attachment

UNITED STATES OF AMERICA
BEFORE THE
NATIONAL LABOR RELATIONS BOARD
THIRTEENTH REGION

Case No. 13-CD-209

[Title Omitted]

ANSWER TO COMPLAINT AND
NOTICE OF HEARING

Now comes LOCAL 134, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO, (hereinafter called Local 134), by its attorneys, ROBERT E. FITZGERALD, JR., and EDWARD J. CALIHAN, JR., and answers the complaint previously issued as follows:

1. Local 134 admits the allegations in Paragraphs I, II, III, V, VI, VII, and XIII.

2. Local 134 denies the allegations of Paragraphs IX (a), IX(b), X, XI, XIV, and XV.

3. Local 134 answers Paragraph IV by admitting that Burton Van Wetering is a Business Agent of the Union but denies that Roger Becker is a Steward or Agent.

4. Local 134 answers Paragraph VIII by admitting that it has received no Board certification for the work in question, but affirmatively states that the Board has recognized in other decisions that Local 134 has jurisdiction over this type of work in Cook County, Illinois, and further states to its knowledge the Communications Workers of America have not received a Board certification for this work in Cook County.

5. Local 134 answers Paragraph XII by admitting that the Board has previously issued the determination

of dispute containing the language set forth in Paragraph XII but it affirmatively states that the decision and determination of the Board contained additional findings not set forth in the complaint.

For the above and foregoing reasons, Local 134 requests that the Board dismiss the complaint previously issued.

Respectfully submitted,

/s/ Robert E. Fitzgerald, Jr.
ROBERT E. FITZGERALD, JR.

/s/ Edward J. Calihan, Jr.
EDWARD J. CALIHAN, JR.

53 West Jackson Boulevard
Chicago, Illinois 60604
WAbash 2-3113

UNITED STATES OF AMERICA
BEFORE THE
NATIONAL LABOR RELATIONS BOARD
DIVISION OF TRIAL EXAMINERS
WASHINGTON, D.C.

13-CD-209

[Title Omitted]

Stephen S. Schulson, Esq., for the General Counsel.
John D. O'Brien, Esq., of Chicago, Ill., for the Charging Party.
Robert E. Fitzgerald, Jr., Esq., of Chicago, Ill., for Respondent I.B.E.W.
Jerome Schur, Esq., of Chicago, Ill., for the Intervenor, C.W.A.

TRIAL EXAMINER'S DECISION

Statement of the Case

Before THOMAS S. WILSON, Trial Examiner: Upon a charge duly filed on December 3, 1970, by International Telephone & Telegraph Corporation, Communications Equipment & Systems Division, herein referred to as ITT-CESD, the General Counsel of the National Labor Relations Board, herein referred to as the General Counsel [1] and the Board, respectively, by the Regional Director for Region 13 (Chicago, Ill.) issued its complaint dated September 10, 1971 against Local No. 134, International Brotherhood of Electrical Workers, AFL-CIO, herein referred to as Local 134 or Respondent.

[1] This term specifically includes the attorney appearing for the General Counsel at the hearing.

The complaint alleged that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(b)(4)(i)(ii)(D) and Section 2(6) and (7) of the Labor Management Relations Act, 1947, as amended, herein referred to as the Act.

Respondent duly filed its answer admitting certain allegations of the complaint but denying the commission of any unfair labor practices.

Pursuant to notice, a hearing was held in Chicago, Illinois, on November 4, 1971 before me. All parties, including Communications Workers of America, herein CWA, who were permitted to intervene, appeared at the hearing, were represented by counsel, and were afforded full opportunity to be heard, to produce and cross examine witnesses, and to introduce evidence material and pertinent to the issues. At the conclusion of the hearing oral argument was waived. Briefs were received from General Counsel, Respondent, ITT-CESD and CWA on November 29, 1971.

Upon the entire record in the case and from my observation of the witness, I make the following:

Findings of Fact

I. Business of Respondent

The complaint alleged, the answer admitted and accordingly I find:

ITT-CESD is engaged in the distribution and installation of electronic telephone equipment and related products with facilities in the States of Connecticut, Illinois, Tennessee, New York, New Jersey, California, Florida and other states. During the past calendar year, ITT-CESD, in the normal course in conduct of its operations, has received goods and materials valued in excess

of $100,000 which was shipped to its facilities directly across the state lines.

ITT-CESD is an employer within the meaning of Section 2(6) and (7) of the Act and is a person engaged in commerce or in an industry affecting commerce within the meaning of the Act.

II. The Labor Organizations

Local No. 134, International Brotherhood of Electrical Workers, AFL-CIO and Communications Workers of America, AFL-CIO, are labor organizations within the meaning of Section 2(5) of the Act.

III. The Unfair Labor Practice

A. *The Facts*

On August 27, 1970, ITT-CESD entered into a contract with the Village of Elk Grove, located in Cook County, Illinois, whereby ITT-CESD agreed to install and maintain for 1 year one of its PBX telephone systems in the new Administration Building of the Village of Elk Grove. On November 10, 1970, ITT-CESD subcontracted the necessary cable pulling work in connection with such contract to C. A. Riley Electric Construction Company whose employees were represented by Local 134. During all times material herein, employees of Charles Johnson Electric Company and Illinois Bell Telephone Company were also working in the new Administration Building. The employees of both these companies were also represented by Local 134.

On November 10, 1970 Lester Fulton, ITT-CESD supervisor of Maintenance and Installation of PBX Systems, met with C. A. Riley, president of C. A. Riley Electric Construction Company, who inquired as to who was going to do the cable termination and hanging of instrument work on the PBX system. Like a good busi-

nessman Riley wanted that work. Fulton answered that ITT-CESD would do that work with its own employees known as Communications Technicians, who, he informed Riley, were represented by CWA. Riley told Fulton that he, Riley, wanted to do the work and suggested that Fulton had best meet with Burton Van Wettering, a business agent for Local 134.

So the next day, November 11, Fulton met Van Wettering in Riley's office where, before excusing himself, Riley informed Van Wettering that ITT-CESD intended to do the terminal work on the PBX system with its own employees who were represented by CWA. Van Wettering then launched into a discussion of various union problems which had arisen and had been solved. He spent some 20 minutes over a problem of labor unions anticipated would arise with a project Leavitt and Son had in Cook County but which never arose due to prior discussions with the unions. Van Wettering told Fulton that the Cook County Building Trades knew that Leavitt and Son had built Leavittown, Pennsylvania, with nonunion help and so were prepared to "stop" Leavitt and Son on their project in Cook County if Leavitt and Son had tried to build that project with nonunion help. He told Fulton that at a pre-building meeting Leavitt and Sons decided to use union help so that the Cook County project proceeded unhampered. Lest the point be dismissed, Van Wettering brought out the fact that Leavitt and Son was also a subsidiary of ITT so that ITT-CESD was in the same category as Leavitt and Son. Van Wettering ended the conversation with a flat statement that CWA was not recognized in Cook County and that CWA would install no telephone equipment in Cook County.

On November 30, 1970 Joe Dale Foster, ITT-CESD Director of Labor Relations, met with Van Wettering at the Holiday Inn in Elk Grove Village and asked Van Wettering if he had any questions regarding the PBX

job in the Administration Building of the Village. Van Wettering stated that Local 134 installed all telephone and PBX equipment in Cook County, Illinois, along with the maintenance work thereon. Foster reminded Van Wettering that ITT-CESD had subcontracted the cable pulling work at the Administration Building to Riley as they had in New York City and in Los Angeles and asked why he could not accept that. Foster also explained that ITT-CESD had a nationwide contract with CWA covering the installation employees. Van Wettering's answer was that CWA did not do telephone work in Cook County, that to allow that would be to recognize CWA which only had some clerical employees in Cook County. Van Wettering then reiterated his story about the Leavitt and Son's project in Cook County, that the Building Trades were prepared to "stop the job" if Leavitt and Son had attempted to build the project with nonunion help but that, to their surprise, Leavitt and Son had decided at a pre-job conference to do the job with union help. As the men shook hands at parting, Foster said that he hoped there would be no hard feelings if Van Wettering did not get the PBX work. To this Van Wettering answered: "We'd better get that work or there will be trouble." He asked that Foster contact his superiors and then let Van Wettering know their decision.

About 9:15 p.m. on December 2, 1970 Foster telephoned Van Wettering and told him that ITT-CESD was going to do the PBX work in the Administration Building with its own employees beginning the next morning. Promptly after the receipt of this telephone call, Van Wettering telephoned the Local 134 business manager at his home and informed him that CWA men would work on the PBX job the next day. The business manager ordered Van Wettering to go to the jobsite the next day to see if CWA employees were in fact working there.

Van Wettering testified that, as ordered, he was at the jobsite the following morning about 8 o'clock. Before leaving shortly thereafter he testified he spoke to no one except to say "Hello" to Robert Becker, the steward for Local 134 on that job.

About 10:15 a.m. that day Fulton arrived at the Administration Building with Communication Technicians Louis Rodriguez and Dennis Satriano, who are headquartered in New York City. As they entered the telephone room in the basement of the building where their work was to begin, there were already two employees of Illinois Bell present and already at work. One of these two employees, known in this record only as "Bart," immediately upon their entry announced that "if they are working here I am leaving" and began packing up his tools preparatory to departure as did the other Bell Telephone employee. A minute or two later steward Becker entered the telephone room, showed his Local 134 card to Fulton and asked to see the cards of Rodriguez and Satriano. Rodriguez showed Becker his CWA card but Satriano had no card to show.[2] Becker immediately announced to those present that either "I can't work here" or "we can't work here."[3] After this comment Becker and the four or five other employees of Johnson Electric drifted away.

Becker remained on the job for a few minutes until it was time to have a coffee break with the rest of the

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[2] Becker testified that Satriano merely shrugged his shoulders as though he did not understand English while Fulton testified that Satriano explained in good English, which he spoke, according to Fulton, that he had forgotten to bring his card from New York. If this difference were material, I would credit the testimony of Fulton.

[3] In his oral testimony Fulton testified that Becker used the plural whereas his affidavit puts the phrase in the singular. According to Becker, after seeing Rodriguez' CWA card and having Satriano "shrug his shoulders," he merely thanked them and left the room.

employees from Local 134 and Jack Schutten, superintendent for Johnson Electric on the job. During this coffee break, Becker was asked about the two ITT-CESD employees and answered that one of them had a CWA card while the other showed no card. At the end of the coffee break Becker told the assembled Local 134 employees that he was going home because he did not want to work with "nonunion men." He thereupon departed for home. The other Local 134 employees also left the jobsite. From home Becker telephoned the union office and left word for the business manager that "there were nonunion men on the job."

No Local 134 employees worked in the Administration Building for the rest of the day.

That afternoon George Coney, Director of Finance for the Village of Elk Grove, invited Harold George, Regional Sales Manager for ITT-CESD, who happened to be in the telephone room at the time with the Communications Technicians, to come upstairs. As George entered the room Coney was talking to one Turnberg, superintendent for the General Contractor on the construction of the Administration Building. Coney asked Turnberg if the job would be completed. Turnberg answered that he could not complete the job if CWA was on the job. Thereupon Coney turned to George and asked if it would be possible not to have CWA on the job the following morning. George stated that it would be possible if Coney made a formal request. Coney made the formal request and George agreed that CWA would not be on the job the next morning. Coney thereupon turned to Turnberg and told him that CWA would not be on the job the next day. Turnberg then dialed a number on the telephone and reported to someone that CWA would not be on the job the next morning.

Late that afternoon Contractor Johnson of Johnson Electric telephoned Becker and informed him that he

"could go back to work there, that these other fellows weren't going to be there." Accordingly Becker returned to work on the morning of December 4. All the other Local 134 employees also returned to work that day.

The ITT-CESD technicians did not return to work until December 21 and thereafter completed their work on the PBX system. The Johnson Electric and Riley Electric employees had completed their work in the Administration Building by December 21.

On the afternoon of December 3, 1970, ITT-CESD through its attorney filed the charge in this case alleging that Local Union No. 134, International Brotherhood of Electrical Workers, AFL-CIO, had violated Section 8(b)(4)(i) and (ii)(D) of the Act by engaging in certain proscribed activity with an object of forcing or requiring ITT-CESD to assign the work in dispute to members of Local 134 rather than to employees of ITT-CESD represented by the Communications Workers of America, AFL-CIO.

A hearing on this dispute was held in Chicago, Illinois, before Hearing Officer Stephen S. Schulson on March 12, 15 and 17, 1971.

On June 30, 1971 the Board, finding that it was satisfied "that there is reasonable cause to believe that a violation of Section 8(b)(4)(D) has occurred," proceeded to determine the merits of the dispute and made the following specific determination of the dispute as follows:

1. Employees of International Telephone & Telegraph Corporation, Communications Equipment & Systems Division, who are currently represented by the Communications Workers of America, AFL-CIO, are entitled to perform work of terminating the cable and installing telephone instruments in Cook County, Illinois.

2. Local Union No. 134, International Brotherhood of Electrical Workers, AFL-CIO, is not entitled by means proscribed by Section 8(b)(4)(D) of the Act to force or require International Telephone & Telegraph Corporation, Communications Equipment & Systems Division, to assign the above work to individuals represented by Local Union No. 134, International Brotherhood of Electrical Workers, AFL-CIO.[4]

On August 30, 1971, Local 134 admittedly informed the Regional Director of the Thirteenth Region that Local 134 did not intend to comply with the Board's aforementioned determination of dispute.

B. *Conclusions*

The evidence here provides and I, therefore, find that:

1. On November 11, 1970 [5] and again on November 30, 1970, Union Agent Burton Van Wettering threatened, coerced and restrained two separate agents of ITT-CESD by warning that, unless ITT-CESD assigned the remaining PBX work of terminating cables and hanging instruments for the PBX system which ITT-CESD had

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[4] Respondent Union ends the first section of its brief as follows:

> Local 134 urges the Trial Examiner to recommend to the Board that it reconsider the previous decision [Decision and Determination of Dispute, 191 NLRB No. 132] because it was in error to have issued that decision in conflict with the above-cited authorities.

The short answer to this is, of course, that, as a Trial Examiner of the National Labor Relations Board, I enjoy no appellate jurisdiction over the actions of that Board but, on the contrary, am bound by the decisions of that Board.

[5] Despite Respondent's objection voiced for the first time in its brief, I use the events of this date although, as stated in the brief, the date was not alleged in the complaint because, despite that omission in the complaint, the conversation here found was fully litigated at the hearing.

contracted to install and maintain in the Administration Building of the Village of Elk Grove to members of Local 134 instead of to members of CWA, the work in the Administration Building and on that system would be "stopped."

In the conversation on November 11 this threat, while not stated in so many words, was made explicitly during Van Wettering's 20-minute harangue about how the Cook County Building Trades Council had decided "to stop" a Leavitt and Son project in Cook County unless Leavitt and Son decided to use union labor in the construction of the project instead of the nonunion labor which Leavitt and Son had used on its Leavittown project in Pennsylvania. This threat was explicit enough during his 20-minute lecture but Van Wettering left nothing to chance when he pointed out that Leavitt and Son was, like ITT-CESD, an affiliate of ITT so that the two organizations were in exactly the "same category." The threat to shut down the Elk Grove administration project was implicit in everything Van Wettering had to say on November 11. A man need not be hit over the head to know that he is being threatened and coerced.

On November 30 Van Wettering went through this same 20-minute threatening harangue to another agent of ITT-CESD as to what would happen unless ITT-CESD assigned the remaining PBX work in the Village Administration Building to members of Local 134 instead of to ITT-CESD's own employees who were members of the CWA. On this second occasion, apparently bewildered that his first threats and coercion had proved unsuccessful, Van Wettering made the threat explicit by ending the conversation with the statement that, unless ITT-CESD assigned the remaining work on the PBX system

to members of Local 134 "there will be trouble." This time Van Wettering was leaving nothing to chance.[6]

After Van Wettering's threats and coercion were proved unavailing as indicated by the telephone call of 9:30 p.m. to him on December 2 that ITT-CESD was assigning the work to its own employees, Van Wettering's prophecy was fulfilled on December 3 at the exact time that the ITT-CESD communications techniques began work in the Administration Building. This stoppage by Local 134 hardly appears to have been a mere concidence.

Upon the anticipated arrival of the ITT employees, the Local 134 steward, Thomas Becker, promptly checked the cards of the two technicians and found one with a CWA card and that that the other had forgotten his card in New York City. Becker, knowing full well what the ITT-CESD technicians were on the premises due to his inspection of the work to be done, promptly stated "I am leaving because I do not care to work with non-union men." [7]

Despite this statement, however, Steward Becker did not immediately depart the premises as promised but carefully waited until after he had had coffee with all the other Local 134 employees on the job, employees of Johnson, Illinois Bell, and also of Riley. At the end of coffee and after explaining that one ITT-CESD technician had a CWA card and the other none, Steward

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[6] Respondent relies upon the denial by Van Wettering that he ever made the "there will be trouble" statement—which was the only element in either conversation which Van Wettering denied. The threat was there whether or not Van Wettering uttered the disputed words. These words merely made explicit what might be said to have been perfectly implicit theretofor. I have no doubt that Van Wettering on the second occasion became explicit. That was the purpose of the conversation.

[7] It is to be noted here that Becker, despite this statement, knew that Rodriguez, at least, was a union man, albeit a member of CWA.

Becker announced to that assembly that he was leaving because he did not care to work with "nonunion men." [8] By this statement and by his action, Steward Becker at least sought to, and did, induce and encourage the other Local 134 members employed by Riley Electric "to refuse to perform any service" in the course of their employment. The encouragement was sufficient so that all Local 134 members left the premises at or about this time.[9]

Van Wettering's conversations with the ITT agents made the object of his and Becker's actions so clear that no discussion of that is here required. Local 134 was going to do the ITT CESD PBX work in Cook County instead of the CWA employees or else the work in the Administration Building would be "stopped." This is prohibited by Section 8(b)(4)(D) of the Act.

Hence we have an agent of a labor organization, Steward Becker, inducing and encouraging employees of a person engaged in commerce and in an industry affecting commerce to refuse in the course of their employment to perform any services for the purposes of forcing or requiring an employer, ITT-CESD, to assign work in members of Local 134 instead of to employees represented by CWA which is a violation of Section 8(b)(4)(i)(D) of the Act.

Then we have an agent of a labor organization, Business Agent Van Wettering, threatening and coercing a

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[8] This plural is Becker's.

[9] I include only the employees of Riley Electric Company in this for the technical—but unrealistic—reason that neither Johnson Electric nor Illinois Bell were alleged, or proved, to be "persons engaged in commerce or in an industry affecting commerce" and hence the employees of these two employers do not fit the description of Section 8(b)(4)(i). The employees of Riley, on the other hand, were engaged in work subcontracted from ITT-CESD which was admittedly an employer described in that section of the Act and hence Riley's employees would necessarily fit within Section 8(b)(4)(i) of the Act.

person admittedly engaged in commerce or in an industry affecting commerce, ITT-CESD, with the object of forcing that employer to assign particular work, the PBX system work in the Administration Building of the Village of Elk Grove, to Local 134 members instead of to employees of ITT-CESD who happen to be members of CWA which is a violation of Section 8(b)(4)(ii)(D) of the Act.

IV. The Effect of the Unfair Labor Practices upon Commerce

The activities of Respondent set forth in section III, above, occurring in connection with the operations of ITT-CESD described in section I, above, had a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

The Remedy

Having found that Respondent has engaged in unfair labor practices proscribed by Section 8(b)(4)(i) and (ii)(D) of the Act I shall recommend that it cease and desist therefrom and take certain affirmative action designed to remedy the unfair labor practices of this nature.

Conclusions of Law

1. International Telephone & Telegraph Corporation, Communications Equipment & Systems Division and C. A. Riley Electric Construction Co. are engaged in commerce or in an industry affecting commerce within the meaning of the Act.

2. Local 134, International Brotherhood of Electrical Workers, AFL-CIO, and Communications Workers of America, AFL-CIO, are labor organizations within the meaning of the Act.

3. Local 134 has failed and refused to comply with the Board's Decision and Determination of Dispute dated June 30, 1971 [191 NLRB No. 122].

4. Respondent, by threatening ITT-CESD and inducing and encouraging employees of an employer engaged in commerce to engage in a strike or a refusal in the course of his employment to perform any services for the purpose of forcing or requiring ITT-CESD to assign particular work to members of Local 134 rather than to ITT employees, represented by CWA, has engaged in unfair labor practices within the meaning of Section 8(b)(4)(i) and (ii)(D) of the Act.

5. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

Upon the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recomemnded: [10]

RECOMMENDED ORDER

Upon the foregoing findings of fact and conclusions of law, and upon the entire record in this case, I recommend that the Respondent, Local No. 134, International Brotherhood of Electrical Workers, AFL-CIO, its officers, agents, and representatives, shall:

1. Cease and desist from:

(a) Engaging in, or inducing or encouraging any individual employed by C. A. Riley Electrical Construction

[10] In the event no exceptions are filed as provided by Section 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Section 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

Company, or by any other person engaged in commerce or in an industry affecting commerce, to engage in, a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities, or to perform any services; or threatening, coercing, or restraining ITT-CESD, or any other employer or person engaged in commerce or in an industry affecting commerce, where in either case described below to employees who are members of or represented by Respondent rather than to employees of ITT-CESD currently represented by CWA.

The work involved consists of:

Terminating the cable and installing telephone instruments in Cook County, Illinois.

2. Take the following affirmative action which is necessary to effectuate the policies of the Act:

(a) Post in conspicuous places in the Respondent's business offices, meeting halls, and all other places where notices to members are customarily posted, copies of the attached notice marked "Apendix."[11] Copies of said notice, on forms provided by the Regional Director for Region 13, shall after being duly signed by the Respondent's authorized representative, be posted by Respondent immediately upon receipt thereof and be maintained by it for sixty (60) consecutive days thereafter. Reasonable steps shall be taken to insure that such notices are not altered, defaced, or covered by any other material.

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[11] In the event that the Board's Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall be changed to read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

(b) Sign and mail sufficient copies of said notice to the Regional Director for Region 13 for posting by ITT-CESD and C. A. Riley Electric Construction Company at all locations where notices to their respective employees are customarily posted, if they are willing to do so.

(c) Inform its members of its obligations set forth in the provisions of the aforesaid notice, by reading such document during regularly scheduled meetings of the membership, and by mailing a copy of same to each of its current membership.

(d) Notify the Regional Director for Region 13, in writing, within 20 days from the date of the receipt of this Trial Examiner's Decision, what steps Respondent has taken to comply herewith.[12]

Dated at Washington, D.C.

/s/ Thomas S. Wilson
THOMAS S. WILSON
Trial Examiner

[12] In the event that this recommended Order is adopted by the Board after exceptions have been filed, this provision shall be modified to read: "Notify the Regional Director for Region 13, in writing, within 20 days from the date of this Order, what steps the Respondent has taken to comply herewith."

FORM NLRB—4726
(-71)

APPENDIX

NOTICE TO MEMBERS

[SEAL] [SEAL]

Posted by Order of the National Labor Relations Board
AN AGENCY OF THE UNITED STATES GOVERNMENT

WE WILL NOT engage in, or induce or encourage any individual employed by C. A. Riley Electric Construction Company, or by any other person engaged in commerce or in an industry affecting commerce, to engage in, a strike or a refusal in the course of his employment, to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities, or to perform any services; or threaten, coerce or restrain any other employer or person engaged in commerce or in any industry affecting commerce, where in either case an object thereof is to force and require ITT-CESD to assign the work described below to employees who are members of or represented by Respondent rather than to employees of ITT-CESD, currently represented by Communication Workers of America.

The work involved consists of:

Terminating the cable and installing telephone instruments in Cook County, Illinois.

LOCAL NO. 134, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO
(Labor Organization)

Dated _____ By _____
(Representative) (Title)

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, Everett McKinley Dirksen Building, Room 881, 219 South Dearborn Street, Chicago, Ill. 60604 Tel. No. (312) 353-7572.

197 NLRB No. 127

UNITED STATES OF AMERICA
BEFORE THE
NATIONAL LABOR RELATIONS BOARD

Case 13-CD-209

[Title Omitted]

DECISION AND ORDER

On February 7, 1972, Trial Examiner Thomas S. Wilson issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief;[1] the Employer filed an answering brief, cross-exceptions, and a supporting brief; and the Intervenor, Communications Workers of America, AFL-CIO, filed a brief in support of the decision of the Trial Examiner.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record[2] and the Trial Examiner's Decision in light of the exceptions and briefs and has decided to affirm the Trial Examiner's rulings, findings, and conclusions and to adopt his recommended Order, with the modifications set forth below.

As more fully set forth in his Decision, the Trial Examiner found that shortly after the ITT employees arrived at the jobsite Respondent's steward, Becker,

[1] Attached to Respondent's brief were copies of the briefs it filed with the Board following the 10(k) hearing and its motion for reconsideration of our Decision and Determination of Dispute issued thereafter (191 NLRB No. 122).

[2] Respondent's request for oral argument is denied as, in our opinion, the record and the exceptions, cross-exceptions, and briefs adequately present the issues and the positions of the parties.

checked their union cards in the presence of other employee-members of Respondent and immediately announced either "I can't work here" or "We can't work here." However, he did not leave then, but shortly thereafter joined the foreman and other employees of Charles Johnson Electric Company, all of whom are represented by Respondent, for coffee.[3] During the conversation, Becker informed the other employees that one of the ITT technicians had a CWA card while the other showed no card. At the end of the coffee break, Steward Becker announced to the assembled employees, "I am leaving because I do not care to work with nonunion men." He thereupon left the jobsite and the other Johnson employees left after him.

It is clear from the totality of Steward Becker's conduct that he was not acting as an individual when he announced in advance his action to the assembled Johnson employees. He was acting in his role as steward when he inspected the union cards of the ITT employees and immediately made the statement referred to above. Rather than leaving the jobsite at that point, he joined the assembled Johnson employees for coffee. We can only infer that he did so to be certain that those employees were aware of the presence of the CWA members. It is apparent that his announcements of his findings regarding the union cards of the ITT employees and the action he was taking were a clear signal designed to "induce or encourage" the assembled Johnson employees to leave the jobsite as well.

We agree with the Trial Examiner that Respondent, by the above conduct of its steward, Becker, violated

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[3] Contrary to the Trial Examiner's finding that members of Respondent employed by Illinois Bell Telephone Company and C.A. Riley Electrical Construction Company were also present at this coffee break, the record shows that only Johnson's employees and foreman were present.

Section 8(b)(4)(i) of the Act. However, we base our finding on the fact that Steward Becker's conduct was directed at the employees of Johnson, not of, Riley. Contrary to the Trial Examiner, we are satisfied that the status of Johnson and Illinois Bell was in issue. The record fully establishes, and we find, that Riley, Johnson, and Illinois Bell, the secondary persons herein, are engaged "in an industry affecting commerce" within the meaning of 8(b)(4).[4] Accordingly, we shall modify the recommended Order to reflect our findings herein.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby adopts as its Order the recommended Order of the Trial Examiner, as herein modified, and orders that Respondent, Local No. 134, International Brotherhood of Electrical Workers, AFL-CIO, Chicago, Illinois, its officers, agents, and representatives, shall take the action set forth in the Trial Examiner's recommended Order, as so modified:

1. Delete from paragraph 1(a) "C. A. Riley Electrical Construction Company" and substitute therefor "Charles Johnson Electric Company."

2. Delete from paragraph 2(b) "C. A. Riley Electric Construction Company" and substitute therefor "Charles Johnson Electric Company."

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[4] *Sheet Metal Workers International Association, Local Union No. 299, AFL-CIO (S. M. Kisner and Sons)*, 131 NLRB 1196, 1199.

3. Substitute the attached notice for the Trial Examiner's notice.

Dated. Washington, D.C., June 22, 1972.

JOHN H. FANNING
Member

RALPH E. KENNEDY
Member

JOHN A. PENELLO
Member

NATIONAL LABOR
RELATIONS BOARD

[SEAL]

APPENDIX

NOTICE TO MEMBERS

Posted by Order of the National Labor Relations Board
AN AGENCY OF THE UNITED STATES GOVERNMENT

WE WILL NOT engage in, or induce or encourage any individual employed by Charles Johnson Electric Company, or by any other person engaged in commerce or in an industry affecting commerce, to engage in, a strike or a refusal in the course of his employment, to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities, or to perform any services; or threaten, coerce or restrain any other employer or person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is to force and require ITT-CESD to assign the work described below to employees who are members of or represented by Respondent rather than to employees of ITT-CESD, currently represented by Communication Workers of America. The work involved consists of:

Terminating the cable and installing telephone instruments in Cook County, Illinois.

LOCAL NO. 134, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO
(Labor Organization)

Dated _____ By _____
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material.

Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, Everett McKinley Dirksen Building, Room 881, 219 South Dearborn Street, Chicago, Illinois 60604, Telephone 312-353-7572.

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

No. 72-1822

LOCAL 134, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO,
Petitioner,

—VS—

NATIONAL LABOR RELATIONS BOARD,
Respondent.

PETITION TO REVIEW AND SET ASIDE AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

TO: THE HONORABLE, THE CHIEF JUDGE AND ASSOCIATE JUDGES OF THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT:

Petition is hereby made for a review of a final order entered by the National Labor Relations Board (hereinafter called Board), which final order adversely affected the interest of the Petitioner and caused it to be an aggrieved party. The order is designated on the record of the Board as Local Union 134, International Brotherhood of Electrical Workers, AFL-CIO, and International Telephone and Telegraph Corporation, Communications Equipment and Systems Division, cited officially as 197 NLRB No. 127.

In support of this Petition, the Petitioner respectfully shows the Court as follows:

1. The Petitioner is a labor organization within the meaning of the Labor Management Relations Act, as

Amended, 61 Stat. 136, 29 U.S.C. No. 151 et seq., (hereinafter called the Act), which maintains its offices and performs its services within the judicial circuit of this Court.

2. The final order of the Board concluded that the Petitioner had violated Section 8(B)(4) of the Act and ordered Petitioner to cease and desist from certain action, to take other affirmative steps specified in the Board's decision and order, and further adopted a prior jurisdictional dispute determination which awarded certain work to a labor organization other than the Petitioner.

3. This Court has jurisdiction under the above-mentioned circumstances under the provisions of Section 10 (f) of the Act.

4. The nature of this proceeding below to which review is sought occurred chronologically as follows. An original unfair labor practice charge was filed by International Telephone and Telegraph Corporation, Communications, Equipment and Systems Division, (hereinafter called the Company) on December 3, 1970. Thereafter, the Board filed a Petition for Injunction under Section 10 L of the Act, in the Federal District Court for the Northern District of Illinois, Eastern Division on December 21, 1970. (Case No. 70 C 3190) Thereafter on January 20, 1971, the Petition for Injunction was dismissed by agreement of all parties.

Pursuant to notice a hearing was held on March 12, 15, and 17, 1971, concerning the judicial dispute matter before a hearing officer of the Board, under the authority of Section 10(k) of the Act. The Board issued its decision and determination of dispute on the jurisdictional question on June 10, 1971, awarding the performance of the disputed work to a labor organization other than the Petitioner.

On September 10, 1971, a Complaint was issued by the Board against the Petitioner alleging violations of Section 8(B)(4) of the Act, and on November 4, 1971, a hearing was held before a Trial Examiner of the Board. The Trial Examiner issued a preliminary order dated February 7, 1972, recommending the finding of a violation of Section 8(B)(4) of the Act by certain conduct of the Petitioner. The case was transferred to the Board and on June 22, 1972, the Board, with certain modifications in the Trial Examiner's decision, found a violation of the Section 8(B)(4) of the Act by the Petitioner and concurrently reaffirmed its prior decision and determination of dispute concerning the disputed work.

5. Petitioner respectfully submits that the Board erred in its initial decision and determination of dispute, in that the Board disregarded substantial evidence on the record as a whole and disregarded the law as enunciated by the Board and the Courts. Further, the Board erred in the finding of a violation of Section 8(B)(4) of the Act by the Petitioner in that its decision is unsupported by substantial evidence on the record as a whole and is contrary to law.

WHEREFORE, Petitioner prays that the Board's decision and determination of dispute and the Board's final order be reviewed and thereafter set aside and remand it to the Board for the issuance of a decision and order dismissing the Complaint in its entirety insofar as it finds a violation of Section 8(B)(4) by the Petitioner, and that it issue a decision and determination of dispute awarding the work to the Petitioner.

Respectfully submitted,

LOCAL 134, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO, Petitioner

BY: /s/ Edward J. Calihan, Jr.
EDWARD J. CALIHAN, JR.

AND: /s/ Robert E. Fitzgerald, Jr.
ROBERT E. FITZGERALD, JR.
Its Attorneys

53 West Jackson Boulevard
Chicago, Illinois 60604
WAbash 2-3113

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

No. 72-1822

[Title Omitted]

CROSS-APPLICATION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

To the Honorable, the Judges of the United States Court of Appeals for the Seventh Circuit:

On October 4, 1972 pursuant to Section 10(f) of the National Labor Relations Act, as amended, (61 Stat. 136, 73 Stat. 519, 29 U.S.C., Sec. 151, et seq.) Local 134, International Brotherhood of Electrical Workers, AFL-CIO instituted the captioned proceeding by filing with this Court a petition to review and set aside an order issued against it by the National Labor Relations Board on June 22, 1972 in a case appearing on the records of the Board as Case No. 13-CD-209.

Pursuant to Section 10(f) of the Act and Section 15 (b) of the Federal Rules of Appellate Procedure, the Board files this cross-application for enforcement of said order.

In support of this cross-application, the Board respectfully shows:

(1) The Petitioner is engaged in business within this judicial circuit where the unfair labor practices occurred. This Court therefore has jurisdiction of this cross-application for enforcement by virtue of Section 10(f) of the National Labor Relations Act, as amended.

(2) Upon due proceedings had before the Board in said matter, the Board on June 22, 1972, duly stated

its findings of fact and conclusions of law, and issued an Order directed to the Petitioner, its officers, agents, and representatives. On the same date, the Board's Decision and Order was served upon the Petitioner by sending a copy thereof postpaid, bearing Government frank, by registered mail, to the Petitioner.

(3) Pursuant to Section 10(f) of the National Labor Relations Act, as amended, and Rule 17 of the Federal Rules of Appellate Procedure, the Board is certifying and filing with this Court a transcript of the entire record of the proceeding before the Board upon which the said Order was entered, which transcript includes the pleadings, testimony and evidence, findings of fact, conclusions of law, and the Order of the Board sought to be enforced.

WHEREFORE, the Board prays this Honorable Court that it cause notice of the filing of this cross-application and transcript to be served upon the Petitioner and that this Court take jurisdiction of the proceeding and of the questions determined therein and make and enter upon the pleadings, testimony and evidence, and the proceedings set forth in the transcript and upon the Order made thereupon a judgment enforcing in whole said Order of the Board, and requiring the Petitioner, its officers, agents, and representatives, to comply therewith.

/s/ Marcel Mallet-Prevost
MARCEL MALLET-PREVOST
Assistant General Counsel
NATIONAL LABOR RELATIONS BOARD

Dated at Washington, D.C. this 3rd day of Nov. 1972.

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT
Chicago, Illinois 60604

November 16, 1972

Before Hon. ROGER J. KILEY, Circuit Judge

[Title Omitted]

PETITION FOR REVIEW OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

This matter is before the Court on the motion of International Telephone & Telegraph Corporation of November 1, 1972 requesting leave to intervene and be made a party to the above-entitled proceedings for all purposes including leave to argue orally before this Court and for leave to file briefs in this cause. On November 2, 1972 this Court ordered a response from the petitioner and respondent in this matter.

The responses having been received by the Court and due consideration having been given all the documents filed with this Court the matter of International Telephone & Telegraph Corporation is GRANTED.

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

486 F.2d 863 (1973)

September Term, 1972—April Session, 1973

No. 72-1822

LOCAL 134, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO,
Petitioner,

v.

National Labor Relations Board

*NATIONAL LABOR RELATIONS BOARD,
Respondent.

Argued April 18, 1973—Decided September 20, 1973

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[864] Before Swygert, *Chief Judge*, Murrah * and Barnes,** *Circuit Judges.*

Murrah, *Circuit Judge.* This is an appeal by a labor union from an order of the National Labor Relations Board (the Board) finding that the union had committed a § 8(b)(4)(D) unfair labor practice in a jurisdictional

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* Senior Judge Alfred P. Murrah of the United States Court of Appeals for the Tenth Circuit sitting by designation.

** Senior Judge Stanley N. Barnes of the United States Court of Appeals for the Ninth Circuit sitting by designation.

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* 13-CD-209; 197 NLRB No. 127.

dispute over installation of telephone equipment. The dispute arose in this way. The Communications Equipment and Systems Division of International Telephone & Telegraph Corporation (the Company) contracted with the Village of Elk Grove, Illinois, to sell, install, test, and maintain a private telephone system for the Elk Grove Village Firehouse and City Administration Offices. This work involved two stages, (1) "pulling cable," *i.e.*, routing the telephone cable to the telephone instruments, and (2) "terminating the cable," that is installing and testing the Private Branch Exchange (PBX) switch system and telephone instruments. The Company subcontracted the "pulling cable" phase to the C. A. Riley Electric Construction Co., whose employees are represented by Local 134, International Brotherhood of Electrical Workers, AFL-CIO (Local 134); the terminating phase was to be accomplished by Company technicians represented by the Communication Workers of America (CWA).

The Local 134 business agent objected to this work assignment telling Company officials that Local 134 did all telephone and PBX installation and maintenance work in that area, that CWA would not install telephone equipment in Cook County, and that "[w]e'd better get that work or there will be trouble."

When CWA technicians appeared at the job site to begin their assigned work, the Local 134 steward announced to his fellow workers either, "I can't work here" or "we can't work here."[1] He and the other Local 134 employees subsequently left the job site, and none returned until the Company agreed that no CWA employees would be on the site. When the Local 134 employees had finished "pulling" the cable, the CWA workers returned and completed the "terminating" phase.

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[1] There is some conflict in the evidence as to his exact words, but the difference is not material.

The Company then filed a charge alleging that Local [865] 134 had violated §§ 8(b)(4)(i) and (ii)(D) of the National Labor Relations Act, 29 U.S.C. §§ 158(b)(4)(i) and (ii)(D), which provide in presently material part that it shall be an unfair labor practice for a labor union or its agents to induce or encourage and employee.

> "(i) . . . to engage in . . . a refusal in the course of his employment to . . . perform any services; or (ii) to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is
>
> * * * *
>
> "(D) Forcing or requiring any employer to assign particular work to employees in a particular labor organization . . . rather than to employees in another labor organization. . . ."

A hearing on the charge, conducted by a hearing officer in accordance with the provisions of § 10(k) of the Act, 29 U.S.C. § 160(k),[2] resulted in a finding that employees represented by Local 134 were not entitled to the disputed work assignment, and that Local 134 was therefore not entitled to attempt to coerce or force the Company to assign the disputed work to its members. When Local 134 informed the Board's Regional Director of its decision not to acquiesce in the Board's determina-

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[2] Section 10(k), 29 U.S.C. § 160(k), provides that

"[w]henever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph (4)(D) of section 158(b) of this title, the Board is empowered and directed to hear and determine the dispute out of which such unfair labor practices shall have arisen, unless, within ten days after notice that such charge has been filed, the parties to such dispute submit to the Board satisfactory evidence that they have adjusted, or agreed upon methods for the voluntary adjustment of, the dispute. Upon compliance by the parties to the dispute with the decision of the Board or upon such voluntary adjustment of the dispute, such charge shall be dismissed."

tion, the Regional Director issued this unfair labor practice complaint. Upon a § 10(b) hearing, 29 U.S.C. § 160 (b), the Board adopted the § 10(k) findings, and accordingly determined that Local 134 had committed a § 8(b)(4)(D) unfair labor practice.

In this § 10(e) enforcement proceeding, Local 134 takes the position that all of the installation work involved here has customarily been performed by Local 134 and, relying upon Longshoremen and Warehousemen's Local 8 (Waterway Terminals Co.), 185 NLRB No. 35, and the rationale in Woodwork Manufacturers v. NLRB, 386 U.S. 612 (1967), contends that the Board erroneously found in the § 10(k) proceeding that the work should be awarded to CWA. In the *Waterway Terminals* and other referred cases the Board, recognizing the concept of customary work assignments, held that § 8(b)(4)(D) was not designed to proscribe union attempts to retrieve the jobs of employees whom the employer had supplanted by reallocating their work to others. Contrary, however, to the position of the union, we do not have a customary work assignment case in which work is usurped from workers of one union by reallocation of workers of another union. Testimony at the § 10(k) hearing clearly indicates that employees represented by CWA customarily install and test equipment similar to that involved here in Cook County, and the Board determined that by area, employer, and industry practice and by skill and training, the CWA employees were more entitled to perform the disputed work than employees of Local 134.

In the *Woodwork Manufacturers* case a trade association filed a § 8(b)(4)(B) charge, claiming that it was an unfair labor practice for carpenters to refuse to handle pre-cut and pre-fitted doors manufactured by a member of the association. The NLRB dismissed this particular charge (149 NLRB 646), and the Court of Appeals affirmed (354 F.2d 594, 599 (70th Cir. 1965)). The Su-

preme Court also affirmed, based upon the Board's [866] specific findings to the effect that the union's conduct involved only a primary contract dispute with the employer over preservation of job-site work customarily performed by the contracting union, rather than a secondary jurisdictional dispute between two unions, and was therefore not prohibited by § 8(b)(4). The court concluded that, viewed as a whole, § 8(b)(4) was manifestly intended to protect genuinely neutral employers from coercive pressures in disputes not their own; and rationalized that "[t]he prohibition of subsection (D) against coercion to force an employer to assign certain work to one of two unions contesting for it protects the employer trapped between the two claims." 386 U.S. at 625. In both *Woodwork Manufacturers* and *Waterway Terminals* the Board and the courts were concerned with the concept of customary work assignments, and simply applied that doctrine to exempt the disputes from the prohibitions of § 8(b)(4).

The insurmountable difficulty confronting the union here is that the salient and controlling facts of its case do not fit the facts of the cases upon which it relies. In our case the Company is a party to a collective bargaining agreement with CWA, covering installation operations, pursuant to which the work in question was assigned to CWA. At the § 10(k) hearing it was concluded that "considerations of collective-bargaining history and agreements favor assignment of the work to employees represented by CWA." Unlike the circumstances of *Woodwork Manufacturers* and *Waterway Terminals*, then, the Company assigned the work to CWA in accordance with a current collective bargaining agreement, but was coerced by Local 134 in an attempt to have the work assigned to employees the Local represents. In these circumstances the employer was "trapped" in a jurisdictional dispute between the two contesting unions. Stated another way, the Local 134 activities complained of did not involve a

primary dispute with the employer over fulfillment of its contract for work customarily performed, but were secondary pressures designed to influence the employer concerning a jurisdictional union dispute. Such is the very activity § 8(b)(4)(D) was intended to prohibit. 386 U.S. at 625. *See also National Labor Relations Board* v. *Local Union No. 9*, 255 F.2d 649 (4th Cir. 1958). We certainly cannot say that the Board's decision was not supported by the controlling facts of the case. *See, e.g., NLRB* v. *Akin Products Co.*, 209 F.2d 109 (5th Cir. 1953).

Compliance With the Requirements of the Administrative Procedure Act

Local 134 also contends that the Board violated Section 5 of the Administrative Procedure Act, 5 U.S.C. § 554, because the hearing officer in the § 10(k) proceeding subsequently served in a prosecutorial capacity as counsel for the General Counsel at the § 8 Unfair Labor Practice Hearing. Section 554 provides in presently material part that "[a]n employee or agent engaged in the performance of investigative or prosecuting functions for an agency in a case may not, in that or a factually related case, participate or advise in the decision, recommended decision, or agency review. . . ." The avowed purpose of this provision of the Act is to ". . . curtail and change the practice of embodying in one person . . . the duties of prosecutor and judge." *See Wong Yang Sung* v. *McGrath*, 339 U.S. 33, 41 (1950). *See also Riss & Co., Inc.* v. *United States*, 341 U.S. 907 (1951). And it is true that in this case the presiding § 10(k) hearing officer also acted as a prosecutor at the Unfair Labor Practice Hearing.

In the Board's view it was not improper for the same person to perform the functions of hearing officer and subsequently prosecute an unfair labor charge based upon the evidence adduced at that hearing, simply because the

hearing was without binding effect on anyone. While this [867] is technically so, it is also true that the hearing officer's rulings at the § 10(k) hearing largely determine what evidence the Board will have to consider at the Unfair Labor Practice Hearing, in which the hearing officer participates as an advocate. It is, we think, an over-simplification to say that the § 10(k) hearing has no binding effect. As Justice White put it in *NLRB* v. *Plasterers' Union*, 404 U.S. 116, 126-127 (1971),

> ". . . the impact of the § 10(k) decision is felt in the § 8(b)(4)(D) hearing because for all practical purposes the Board's award determines who will prevail in the unfair labor practice proceeding. If the picketing union persists in its conduct despite a § 10(k) decision against it, a § 8(b)(4)(D) complaint issues and the union will likely be found guilty of an unfair labor practice and be ordered to cease and desist. On the other hand, if that union wins the § 10(k) decision and the employer does not comply, the employer's § 8(b)(4)(D) case evaporates and the charges he filed against the picketing union will be dismissed."

The Board also urges that the combination of functions did not violate the Administrative Procedure Act because the hearing officer performed his prosecutorial duties only after he had already presided at the § 10(k) hearing. But, as Justice Jackson cogently observed in *Wong Yang Sung*, *supra*,

> "[a] genuinely impartial hearing, conducted with critical detachment, is psychologically improbable, if not impossible, when the presiding officer has at once the responsibility of appraising the strength of the case and of seeking to make it as strong as possible. Nor is complete divorce between investigation and hearing possible so long as the presiding inspector has the duty himself of assembling and

presenting the results of the investigation." 339 U.S. at 44.

It is apparently admitted that § 554 applies to § 10(k) hearings. And § 556 of the Act provides in presently material part that, in hearings required to be conducted in accordance with § 554, ". . . [t]here shall preside at the taking of the evidence . . . one or more hearing examiners appointed under Section 3105 of the title." [3] Section 3105 provides in presently material part that hearing examiners ". . . may not perform duties inconsistent with their duties and responsibilities as hearing examiners." This is, we think, a specific manifestation of the congressional intent that administrative officers who preside at such hearings be completely "isloated," "impartial," and "independent" (*see, e.g.*, 92 Cong. Rec. A-2982 (1946), 92 Cong. Rec. 2160 and 2163 (1946), 20 Fed. B. J. 74-76 (1960), and 27 Fed. B. J. at 362 (1967); that there shall be no "commingling" of the functions of investigation or advocacy with the function of decision making. *See Wong Yang Sung, supra* at 44 *quoting* the Attorney General's Committee on Administrative Procedure. "It has been said that hearing examiners are the administrative equivalent of federal judges," [4] Indeed, the title of hearing examiner has recently been changed to "Administrative Law Judge." *That is, see* 37 Fed. Reg. 16787 (No. 162, Aug. 19, 1972).

In our case the hearing officer had the duty of hearing the evidence in the case, and subsequently urging and

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[3] We assume that the § 10(k) hearing officer in this case is the equivalent of a hearing examiner for purposes of § 556, inasmuch as the statute so requires and no point was made of any distinction, either at the hearing or on appeal.

[4] *See comments* of Henry S. Sham, NLRB Trial Examiner, at 20 Fed. B. J. 74, 79 (1960), *quoting* Mr. Earl W. Kintner, then Chairman of the Federal Trade Commission.

relying upon it as prosecutorial evidence. We think that the knowledge on the part of the presiding officer that he [868] will subsequently advocate a position based upon his own evidentiary rulings at the § 10(k) hearing could very well influence his decisions at that hearing. This commingling of functions is plainly inconsistent with both the spirit and the letter of the Act, and, we think, incompatible with the accepted norms for the proper administration of justice. An order of the Board thus tainted should not be enforced.

Enforcement is accordingly denied.

A true Copy:
Teste:

Clerk of the United States
Court of Appeals for the
Seventh Circuit

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

September 20, 1973

Before
Hon. LUTHER M. SWYGERT, Chief Judge
Hon. ALFRED P. MURRAH, Senior Circuit Judge *
Hon. STANLEY N. BARNES, Senior Circuit Judge **

[Title Omitted]

PETITION FOR REVIEW OF A DECISION OF THE NATIONAL LABOR RELATIONS BOARD

This cause came on to be heard on the transcript of the record from the National Labor Relations Board, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this Court that the application for enforcement of a decision of the National Labor Relations Board entered in this cause on June 22, 1972, be, and the same is hereby, DENIED, in accordance with the opinion of this Court filed this day.

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* Senior Judge Alfred P. Murrah of the United States Court of Appeals for the Tenth Circuit sitting by designation.

** Senior Judge Stanley N. Barnes of the United States Court of Appeals for the Ninth Circuit sitting by designation.

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT
Chicago, Illinois 60604

November 26, 1973

Before
Hon. LUTHER M. SWYGERT, Chief Judge
Hon. ALFRED P. MURRAH, Circuit Judge
Hon. STANLEY N. BARNES, Circuit Judge

[Title Omitted]

PETITION FOR REVIEW OF A DECISION OF THE NATIONAL LABOR RELATIONS BOARD

On consideration of the petition for rehearing filed in the above-titled cause,

IT IS HEREBY ORDERED that the petition for rehearing in the above-titled appeal be and the same is hereby denied.

[3] PROCEEDINGS

HEARING OFFICER: SCHULSON: The hearing will be in order.

This is a formal hearing in the matter of Local Union No. 134, International Brotherhood of Electrical Workers, AFL-CIO and International Telephone and Telegraph Corporation, Communications Equipment and Systems Division and Communications Workers of America, AFL-CIO, Case No. 13-CD-209.

The Hearing Officer for the National Labor Relations Board is Stephen S. Schulson.

* * * *

[22] HEARING OFFICER: At this time I plan to rule on two petitions to revoke subpoenas, one filed by Mr. O'Brien and one filed by Mr. Schur.

I have received IBEW's written response to Mr. O'Brien's petition, but I received no written response to Mr. Schur's petition so at this time I would like Mr. Fitzgerald to give me the IBEW's position on Mr. Schur's petition to revoke subpoenas.

MR. FITZGERALD: Yes.

* * * *

[32] MR. FITZGERALD: If you are talking about 10(b) problems, if the contract is void, then I think your 10(b) problems—if it's void as an existing contract then you don't have a 10(b) problem on date of execution; in other words, the Supreme Court doctrine that 10(b) applies to specific events unless the contract itself is invalid, then you can file a charge in that sense at any time.

Now, if you apply 10(b) to this proceeding, I think that that would be inappropriate only in the sense we have heard representation that this document is going to be introduced as evidence and presumably argued by the Employer and CWA that this is an element.

If not, maybe the only element as far as I know of the [33] claim CWA has for this jurisdiction in Elk Grove and Cook County, I submit that the Board would be abdicating its responsibility if it did not inquire into the validity of the contract submitted and urged as a basis for the jurisdictional claim and I submit further that the references to the determination by the Board in this regard are incorrect and are set out more fully in my answer that in the New York representation petition the Board neither in New York or on appeal in Washington D.C. considered these factors at all and the appeal itself concerned two other issues, one the scope of the unit and

two the fact that the contract was entered into when there was not a representative compliment.

This is different from my point that this is an invalid contract because it violates Section 8(a)(2) because of the application of Section 8(f).

I think this is not been litigated and has to be.

HEARING OFFICER: Are you saying the Union was a minority union when the contract was entered into?

MR. FITZGERALD: As far as we know they had no members claimed by this Employer and I think that this evidence, this information has to be in the record if we are going to, if the Board is going to know that this is a valid contract or invalid as we contend.

HEARING OFFICER: I am going to grant the petition to revoke.

* * * *

[3] TRIAL EXAMINER WILSON: Will the parties please state their appearances, for the record.

MR. SCHULSON: For the General Counsel, Stephen S. Schulson.

* * * *

[5] MR. SCHULSON: I would like at this time, one point that [6] Mr. Fitzgerald raised, it is my understanding that under 102.92 of the Board's rules, the record and the exhibit in the previous 10(k) hearing automatically become part of this proceeding by operation of the rules.

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

No. 72-1822

[Title Omitted]

BRIEF FOR PETITIONER UNION LOCAL 134, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO

STATEMENT OF ISSUES

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1. Did the respondent NLRB violate the Administrative Procedures Act by combining in the same individual employee, the position of hearing officer at the jurisdictional dispute hearing held under § 10(k) of the Act, and the position of prosecutor, as counsel for general counsel, in the unfair labor practice hearing under § 8 of the Act."

2. Did the respondent NLRB violate the basic procedural rights to Due Process of Local 134, by refusing to consider evidence sought by Local 134 concerning the execution of a collective bargaining agreement between the employer, ITT, and another union, CWA, but thereafter relying upon the contract as the primary basis for awarding the work jurisdiction to the CWA?

3. Did the NLRB violate the Due Process rights of Local 134 by issuing its notice of hearing concerning a dispute in Cook County, Illinois, and then permitting evidence to be presented in the hearing concerning practices, beyond both Cook County and the jurisdiction of Local 134, under both an industry practice and an employer practice

which are nationwide in scope, and thereafter relying upon that evidence which was adduced without notice or opportunity to be heard at the hearing by the International Union or other local unions located outside of Cook County, Illinois.

4. Has the NLRB erred on the merits in its jurisdictional decision by ignoring the historical jurisdiction of Local 134 that existed for more than forty years, and by making findings of fact that are contrary to the evidence in the record concerning the similarity of the disputed work with other work historically performed by Local 134, and by ignoring evidence concerning the skill, the efficiency, and the economy of the performance of the work by Local 134's members.

5. Has the N.L.R.B., in its jurisdictional decision and determination of dispute violated its own prior decisions and the Supreme Court decision in *National Woodworkers*, in deciding a jurisdictional question when the respondent union is seeking to retain its historical jurisdiction?

6. Has the NLRB violated the Supreme Court decision in *National Woodworkers*, which holds that the union has a right to retain its basic jurisdiction, by its decision that the Local 134 violated Section 8(b)(4)(D) in seeking to retain its jurisdiction.

7. May the NLRB find that an individual member, who possesses the function of union steward is without the ability to make a personal decision to leave a job site when non-union men are present, without binding the union as its agent for the finding of a violation of Section 8(b)(4) of the Act.

SUPREME COURT OF THE UNITED STATES

No. 73-1313

INTERNATIONAL TELEPHONE AND TELEGRAPH CORPORATION, COMMUNICATIONS EQUIPMENT AND SYSTEMS DIVISION,

Petitioner,

v.

LOCAL 134, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO

ORDER ALLOWING CERTIORARI. Filed May 13, 1974.

The petition herein for a writ of certiorari to the United States Court of Appeals for the Seventh Circuit is granted.